Supreme Court, U.S.
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No. 00-836

IN THE

Supreme Court of the United States

George W. Bush,
Petitioner,
v.
Palm Beach County Canvassing Board, *et al.*,
Respondents.

On Writ of Certiorari
to the Supreme Court of Florida

SUPPLEMENTAL BRIEF OF RESPONDENTS AL GORE, JR., AND FLORIDA DEMOCRATIC PARTY

(Additional Counsel Listed
In Signature Block)

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November 30, 2000

I. PETITIONER'S DUE PROCESS CLAIM WAS NOT PROPERLY RAISED AND HAS NO MERIT.

Petitioner's opening brief contained no separate due process argument and mentioned the phrases "due process" and "fundamental fairness" only in passing, as part of a discussion of *Roe* v. *Alabama*, 43 F.3d 474 (CA 11 1995) (per curiam). See Pet.Br. 28. Accordingly, Respondents had no occasion to respond to any due process issue in their reply brief. However, Petitioner's reply brief now seeks to resurrect a due process claim. Pet. Reply Br.18-19. That attempt is improper, both because the claim was not raised adequately in the opening brief and because it seeks to smuggle in questions relating to the conduct of manual recounts on which this Court has denied certiorari. In any event the claim has no merit. The Florida Supreme Court's decision did not constitute a retroactive change in the law at all. Even if it had constituted such a change, it would not have deprived Petitioner of any protected liberty or property interest or worked any unfairness, for the reasons we have already stated in our opening brief, at pp. 44-49.

II. THE QUESTION WHETHER THE FLORIDA LEGISLATURE CAN AT THIS TIME APPOINT ITS OWN ELECTORS BY STATUTE IS NOT BEFORE THIS COURT FOR DECISION.

Petitioner's Reply Brief continues to press arguments that simply are not encompassed by the questions that this Court agreed to decide. Thus, Petitioner and his *amici* have continually raised the possibility that the Florida Legislature might convene to enact legislation intended to appoint Florida's electors if the State's courts fail conclusively to decide the disputes pending before them by December 12th. Pet. Reply Br. at 19-20. The validity of speculative

future conduct by the Florida Legislature is not before this Court. It is quite clear in particular that the question whether such state legislation in the wake of an election is authorized by 3 U.S.C. § 2 is not before this Court for decision. The questions presented by petitioners and the additional question suggested by this Court are directed entirely at the validity of the Florida Supreme Court's action as measured against 3 U.S.C. § 5 and Article II, § 1, cl. 2 of the United States Constitution. *Webster* v. *Doe*, 486 U.S. 592 (1988) (question not presented in petition for certiorari will not be considered); *General Talking Pictures Corp.* v. *Western Electric Co.*, 304 U.S. 175, 177-78 (1938).

CONCLUSION

The judgment should be affirmed.

Respectfully submitted,

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